

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLANT AND JOINT APPENDIX

IN THE
UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals
For the
No. 11,522 *District of Columbia Circuit*

FILED AUG 28 1952

IDA M. HAHN,
Appellant,

v.

CARL R. GRAY, JR.,
ADMINISTRATOR VETERANS' AFFAIRS,
Appellee.

Joseph W. Stewart
CLERK

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**Appeal from United States District Court for the
District of Columbia**

HARLAN WOOD
Evans Building
1420 New York Ave. N.W.
Washington 5, D. C.
Attorney for Appellant

No. 11,522

STATEMENT OF QUESTIONS PRESENTED

1. The appellant questions the application of the provisions of Section No. 5, Public Law No. 2, 73rd Congress (48 Stat. 9) or Section No. 11, Public Law No. 866, 76th Congress (54 Stat. 1197) to the facts in this case.

2. The appellant questions the power of the Administrator of Veterans' Affairs to impeach a final decree of a court of competent jurisdiction, which annuls a pretended marriage between appellant and another and his refusal to give "full faith and credit" to such a decree which results in a deprivation of appellant's pension as a widow of a veteran.

INDEX

	Page
JURISDICTIONAL STATEMENT	1
STATUTES INVOLVED	1
(a) Section 5—Public Law 2 (48 Stat. 9)	1, 2
(b) Section 11—Public Law 866 (54 Stat. 1197)	2
STATEMENT OF CASE	2, 3
STATEMENT OF POINTS ON APPEAL	3
SUMMARY OF ARGUMENT	3, 4
ARGUMENT	4
(a) Preliminary	4, 5
(b) Statutes are not applicable	5, 8
(c) Decree of Supreme Court of New York should be observed	8, 9
(d) Conclusion	10

TABLE OF CASES

Van Horne v. Hines, Administrator, 74 App. D.C. 214, 216; 122 Fed. (2) 207	4, 5
Slocumb v. Gray, Administrator, 86 U. S. App. D.C. 5, 8; 179 Fed. (2) 31	5

IN THE
UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA

No. 11,522

IDA M. HAHN,
Appellant,

v.

CARL R. GRAY, JR.,
ADMINISTRATOR VETERANS' AFFAIRS,
Appellee.

Appeal from a Judgment of the United States District
Court for the District of Columbia

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

The jurisdiction of the United States Court of Appeals is invoked pursuant to the provisions of Title 28, U.S.C.A. Section 1291.

STATUTES INVOLVED

The pertinent portions of the statutes involved herein, the proper construction of which is determinative of the questions presented, are:

“All decisions rendered by the Administrator of Veterans Affairs * * * shall be final and conclusive on all questions of law and fact, and no other official or court of the United States shall have jurisdiction

to review by mandamus or otherwise any such decision" (Section 5, Public Law 2, March 20, 1933; 48 Stat. 9; 38 U.S.C.A. 705),

and;

"* * * the decisions of the Administrator of Veterans' Affairs on any question of law or fact concerning a claim for benefits or payments under this or any other act administered by the Veterans' Administration shall be final and conclusive and no other official or any court of the United States shall have power or jurisdiction to review any such decision" Sec. 11—Public Law 866—76th Congress (54 Stat. 1197).

STATEMENT OF THE CASE

Ida M. Hahn received a pension of \$38.00 per month from September 1937 until May 30, 1947, as the widow of John Frederick Hahn, who served in the United States Coast Guard prior to and through World War I and until his disability retirement in 1936. (App. p. 5)

On May 31, 1947, the appellant went through a pretended marriage ceremony with one, Harry W. Dreyer. Her pension as the widow of Hahn was thereupon discontinued. (App. p. 5)

On October 26, 1948, the Supreme Court of New York (Sullivan County) entered its interlocutory decree annulling the pretended marriage of appellant to Dreyer on *the ground of fraud*. Three months thereafter the decree became final. This ceremonial marriage having been annulled, the appellant by virtue of one of the provisions of the decree assumed her former name, Ida M. Hahn. (App. pp. 11, 12)

Appellant then applied to appellee for a restoration of her pension or the death benefits due her as the widow of John Frederick Hahn. Appellee rejected her application notwithstanding the decree. The Administrator holds that

appellant is not the unremarried widow of the veteran. (App. p. 6)

Hence, this mandamus action was brought to compel recognition of appellant's rights as widow and for a restoration of her pension as such.

The court below, upon an agreed statement of facts (App. pp. 15, 16), entered its findings in accordance therewith and concluded as a matter of law that appellant's pretended marriage to Dreyer barred her, as the widow of Hahn, from receiving any further pension or compensation. (App. pp. 17, 18)

The court on June 17, 1952 entered its judgment in favor of appellee and from that judgment this appeal is being prosecuted. (App. p. 18)

STATEMENT OF POINTS ON APPEAL

1. The court erred in applying the provisions of Public Law No. 866 of the 76th Congress (54 Stat. 1197) to the facts in the instant case, thereby entering judgment for the defendant.

2. The court erred in applying the provisions of Public Law No. 2 of the 73rd Congress (48 Stat. 9), thereby entering judgment for the defendant.

3. The court erred in holding that the Administrator of Veterans' Affairs had the power to set aside in effect a decree of a court of competent jurisdiction which results in depriving appellant of a right to a pension as the widow of a deceased veteran.

SUMMARY OF ARGUMENT

The appellant's appeal contains two principal objections to the judgment of the lower court.

1. The appellant contends that the application by the Administrator of Veterans' Affairs of the unappealable

and unimpeachable provisions of Public Law No. 2 (48 Stat. 9) and Public Law No. 866 (54 Stat. 1197) vesting in him final authority in his decisions on questions of law or fact concerning a claim for benefits or payments under veterans' laws administered by the Administrator, so far as the facts in this case are concerned, is erroneous. In this, appellant does not question the finality of the Administrator's decision. Here the contention does not relate to a claim for benefits or payments. That is fixed. With it appellant is satisfied. The question before the court is,

Do the statutes confer on the Administrator the power to deny the *existence* of the claimant?

2. The appellant will argue further that the Administrator is bound as would be this court to give "full faith and credit" to the final decree of the Supreme Court of New York (Sullivan County) which annulled appellant's pretended marriage to one Dreyer and which decree restored her to her status as the unremarried widow of her deceased veteran husband, John Frederick Hahn, thereby entitling her to a pension as such widow.

It may be argued that the distinction in No. 1 is fine; yet, how crystal clear it is. With respect to No. 2 there should be, on general principles alone, little room for argument, otherwise we abandon reason and substitute arrogance.

ARGUMENT

Preliminary

So far as counsel has been able to ascertain, the specific points raised in this appeal are not the subject-matter of any past judicial expression. No case on all fours has been found. While it is true there have been expressions of this court in relation to the application of the statutes conferring unappealable finality on the decisions of the Administrator of Veterans' Affairs (*Van Horne v. Hines*,

74 App. D. C. 214, 216; *Slocumb v. Gray*, 86 U. S. App. D. C. 5, 8), the cases in the language of Chief Justice Groner (*Van Horne* p. 216 supra) relate to a final decision of the Administrator "concerning a claim for * * * payments. He further says in a preceding sentence referring to the plain language of the statute

"concerning a claim for benefits or payments"

in holding that the court might not review such decision of the Administrator.

This case, it is submitted, is removed from the category of those comprehended within the statutes. This case requires a re-examination of the language in the statutes.

The claim does not relate to "benefits or payments" under any statute administered by the Administrator. These are graduated and fixed. With respect to them, there is no quarrel, either as to amount, time of payment, duration or any other of a thousand questions which may arise respecting a claim for "benefits or payments".

One of the two primary questions solely involved is

"May the Administrator deny the very living existence of a claimant?"

and the other simply is,

"May the Administrator disregard the legal effect of a valid decree of annulment and thereby hold that appellant is no longer the widow of her deceased veteran husband?"

The Statutes Are Not Applicable

At the outset, without a *discriminating analysis*, appellant faces an insuperable bar to any further rights under the pension laws of the United States.

Appellant's right, as the widow of John Frederick Hahn (a peace- and war-time veteran) to a pension, was recognized by the Administrator. She was paid \$38.00 per

month, the statutory allowance, from his death until she entered into a pretended marriage, fraudulently procured and thereafter on that ground annulled.

So, Ida M. Hahn was in existence when, her statutory right being fixed, the Administrator recognized her. Though a court of competent jurisdiction, after due process, annulled a fraudulently procured marriage and restored her legal status as the widow of John Frederick Hahn, the Administrator refuses to recognize that she exists, holding the annulment invalid.

A consideration of the history of the time and conditions surrounding the passage of Public Law No. 2 (48 Stat. 9) reveals that it is found in the so-called "Economy Act". This act eliminated many from the pension rolls and reduced others in amounts, benefits and grades. It was contemplated that confusion and litigation would inevitably ensue. Complaints would arise. The judicial process would be activated. To make uniform and stable the interpretation of the varied veteran compensation, death benefit and pension laws, the Congress vested in the Administrator a finality of decision in all questions of law or fact relating to claims and withdrew jurisdiction from any other official or court to review any such of the Administrator's decisions. This withdrawal of jurisdiction is in Section 5 of the Economy Act, one section among many others that affected the entire structure of our pension and compensation laws and regulations.

To ameliorate the harshness in the application of the stringent provisions of the Economy Act (48 Stat. 9), the Congress passed the amendatory Act, Public Law 866 (54 Stat. 1197). In it among other provisions is found Section 11. This section confers still broader powers on the Administrator. Respecting what? The conclusive finality of the decisions of the Administrator on any question of law or fact "*concerning a claim for benefits or payments*" and removing such decisions from judicial review.

This provision of the statute enlarges the previous power of the Administrator and read in connection with the purpose of the entire statute in extending and enlarging veteran benefits reveals the purpose of Congress that there should be uniformity and stability of decision without judicial interposition. The complex variations and diversified forms of benefits and payments made necessary the impenetrable dikes created by the statute.

The menagerie of cases which could arise under all the statutes and regulations administered by the Veterans Administration, if resort to judicial review were allowed, would possibly create conflicts in administration and render consistency of action well nigh impossible. It would be a Herculean task for the court to keep abreast of the Regulations. In epexegetis, some are made in the morning, modified at noon and annulled at night, a process that goes on day by day and apparently almost ad infinitum.

All these protective provisions relate to *claims* for *benefits* or *payments*. The decisions of the Administrator on them admittedly are final and conclusive. The dispute herein does not relate to a *claim* for *benefits* or *payments*. Appellant contends that these statutes do not give the Administrator the right to deny that she—Ida M. Hahn—is the widow now of John Frederick Hahn. Appellant contends that the Administrator in denying her existence has over-reached the purpose and intent of the statutes. Appellant contends the Administrator in denying her *existence* as a claimant has given meaning to the statute not comprehended within its words and phrases, and which is beyond a fair and reasonable interpretation thereof.

If the Administrator can say and hold that Ida M. Hahn is not, and does not exist as the widow of John Frederick Hahn what prevents him out of the superabundance that luxuriant knowledge and power from holding:

(a) Widow, you have no right to a pension, you are red-headed.

(b) Widow, you have no right to a pension, your eyes are brown.

(c) Widow, you have no right to a pension, you weigh less than one hundred and fifty pounds.

(d) And so on, to cover any eccentric conclusion.

It is therefore respectfully submitted that the court below erred in holding that appellant is barred from asserting her rights as the widow of John Frederick Hahn by reason of any prohibition contained in Public Law No. 2 (48 Stat. 9) or Public Law No. 866 (54 Stat. 1197).

The Decree of Supreme Court of New York Is Entitled to Full Faith and Credit

It must come with a note of surprise that the Administrator of Veterans' Affairs refuses to give full faith and credit to a final decree of the Supreme Court of New York (Sullivan County). No attack from any angle has been made by the Administrator on the jurisdiction of the Supreme Court of New York. The court had jurisdiction of the parties, the subject-matter and due process in every respect was observed in the annulment proceeding between appellant and Harry W. Dreyer. The final decree was within the power of the court to grant upon the statutory ground therein contained.

What do the agents of the Administrator do to the decree? They perform major surgery upon it. They raise the curtain, go behind the decree, examine the evidence, criticize it, find it wanting in sufficiency and otherwise impeach it. They comment upon the defendant's default in that proceeding. They disparage the fact that the United States was not a party to a private civil suit between two individuals wherein an annulment is sought. How projective can the interest be? The United States might just as

well have been interested in the type of clothing worn by appellant when she appeared in court.

The holding of the Administrator makes a farce of a solemn decree of a court of competent jurisdiction.

This court would not presume the power or arrogance to dissect such a decree but would calmly declare its regularity and hold that it was bound under the Constitution to give that decree "*full faith and credit*". The question presents itself for determination here—"Did Congress give one Administrator of the Government and thousands of his subordinates a power withheld by the Constitution from the courts?"

In the changing vicissitudes of a revolving personnel, how reckless a bestowal of power, if the Administrator's contention has merit! Will this court read the opinion and judgment of the Board of Appeals of the Veterans Administration? (App. pp. 5, 6, 7). What a legal monstrosity! From the beginning to the end of this administrative proceeding there is found an assumption of power that strains the statutes to their breaking point. Refuge is sought in prohibitive statutes, however capricious, arbitrary, wrongful and deflected are the conclusions. Supreme, unassailable, unappealable, final and conclusive is the decision even when, as herein, it does not relate to a *claim* for the *payment of benefits* or compensation but merely to the recognition of the appellant as one now in being, as Ida M. Hahn, so declared to be by a plenary court of ample jurisdiction.

It is respectfully submitted that the Administrator is bound in general principles alone to give full faith and credit to the final decree of the Supreme Court of New York (Sullivan County) wherein appellant's marriage was annulled. If the marriage was annulled, there was no marriage. Else, there is no distinction between a divorce and an annulment. There having been an annulment, counsel submits the Administrator is bound by it.

CONCLUSION

Counsel has not burdened this court with a host of irrelevant or tangent decisions. This widow is unable to pay extensive printing costs. Furthermore, industry on the part of counsel fails to disclose any helpful adjudication. The facts in this case take us into the forest primeval, with two brief sections of two Public Laws to construe in the light of the particular facts in this case. Counsel will leave it to the Government to flood the court with innumerable cases which upon discriminating analysis—like the *Van Horne* and *Slocumb* cases *supra*—will show their total inapplicability.

It is respectfully submitted that since no claim for benefits or payments under statute administered by the Veterans' Administration is involved in this case, Public Laws 2 and 866 discussed above have no bearing on the facts in this case. Recognition of Ida M. Hahn as the widow of John Frederick Hahn is a *far cry* from a claim for a benefit.

In the whole labyrinth of the multiple types of claims, benefits, compensation schedules, and variations and interpretations of them all, such as to bewilder the ordinary mind, arising out of the generous action of Congress since World War I, must we strain at a gnat by shaving off the right of recognition of just one widow.

Respectfully submitted,

HARLAN WOOD,
Attorney for Appellant.

APPENDIX

INDEX

	Page
Complaint for Mandatory Injunction, etc.	1, 5
(a) Exhibit A, Decision Veterans Board of Appeals	5, 7
(b) Exhibit B, Communication of Counsel	8
(c) Exhibit C, Appellee's reply Communication	8, 9
(d) Exhibit D, Counsel's rejoinder Communication	10, 11
(e) Exhibit E, Decree, Supreme Court, New York	11, 12
Memo: Motions for Injunction, etc.	13
Appellees' Answer	14, 15
Stipulation of Facts	15, 16, 17
Findings of Fact, Conclusions of Law, Judgment	16, 17

1 UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

IDA M. HAHN, Smallwood, N. Y.,
Plaintiff,

v.

CARL R. GRAY, JR., Administrator of Veterans Affairs,
Vermont Avenue at H Street, N. W., Washington, D. C.,
Defendant.

C. A. No. 5213-50

COMPLAINT FOR MANDATORY INJUNCTION, ETC.

I

This Court has jurisdiction of the above entitled cause by virtue of the provisions of the Code of Laws in force in the District of Columbia and the applicable provisions of the United States Statutes at large relating to the parties hereto and the subject matter hereof.

II

The plaintiff sues the defendant for that she is the widow of John Frederick Hahn, deceased, whose Veterans Administration File and Symbol is XC-997-680, as known in the Office of the defendant, the Administrator of Veterans Affairs, acting under and pursuant to the Statutes of the United States, duly passed and approved for and on behalf of veterans, their widows and orphans; the plaintiff, a veteran of World War I, says that her husband died on, to wit, September 9, 1937, and under and by virtue of the applicable provisions of the United States Statutes at large, the plaintiff was awarded death compensation as the widow of said deceased veteran and is now entitled to a sum of, to wit, Forty-two (\$42.00) Dollars per month as such widow; that said payments were made to her from, to wit, September 17, 1937 to, to wit, May 30, 1947; that on, to wit, May 31, 1947, the plaintiff went through a formal and pretended

marriage ceremony with one, Harry W. Dreyer in the State of New York, which said marriage, the plaintiff said
2 was never consummated, in fact and purpose, as a lawful, valid, or subsisting marriage and in consequence of which on, to wit, October 26, 1948, in a due and regular proceeding in the Supreme Court for Sullivan County in the State of New York, a Decree of Annulment, annulling and declaring said pretended marriage to have been of no legal force and effect, was entered by the Supreme Court in and for the County of Sullivan in the State of New York, and in consequence of which, the plaintiff is now and has always been the unremarried widow of her late husband, John Frederick Hahn; that plaintiff made application for the restoration of death compensation under and by virtue of the laws of the United States, administered for and on her behalf by the defendant, his agents, employees and servants thereunto lawfully deputized, but, notwithstanding plaintiff's claim and her lawful right as the widow of the deceased veteran, John Frederick Hahn, defendant, through his subordinate officers, known as the Board of Appeals, for the Veterans Administration, on, to wit, July 12, 1950 in Docket Proceeding 69-251, as known in the Office of the defendant, pretended and assumed authority, without right and not in accordance with the Statute in such cases made and provided, to try plaintiff's Annulment Proceeding, de novo, receiving certain documents, reports, etc., into evidence, some of which were admissible as a matter of law and others of which were in the nature of hearsay evidence and as a result of said hearing in which the defendant, his subordinate agents, employees and servants, acted not only as Representatives of the Government but Judges of the fact and law, and as a quasi Court, entered a finding, the effect of which was to set aside the Annulment Decree of the State of New York and to declare the plaintiff still the legal wife of one, Harry W. Dreyer, and the defendant refused to accept said Decree of Annulment or to give

it full faith and credit but did impeach and, in effect, set same aside, and declined to restore or award the death compensation due the plaintiff as the unremarried widow of the aforesaid veteran, John Frederick Hahn, and in its decision among other things, said Board of Appeals held:

3 "The Board's decision is not intended to be a determination of the marital status of the appellant except as it may affect her claim for benefits under laws administered by the Veterans Administration, based upon the Military Service of the veteran.

"The Board finds that the appellant, Ida M. Hahn, upon the present record, is not entitled to the restoration of death compensation as claimed unremarried widow of the veteran. The appeal is accordingly denied."

Plaintiff avers and says that the defendant, his agents and servants did not possess the power and authority under the statutes in such cases made and provided, to set at naught the Final Decree of the Supreme Court of the State of New York, as aforesaid; that said statutes afford the Administrator of Veterans Affairs no authority or discretion in the premises; the plaintiff further says that in denying her death compensation as the unremarried widow of said veteran, the Administrator of Veterans Affairs, his employees, agents and servants engaged in that behalf have exceeded their authority and that their quasi judicial determination of a fact theretofore judicially and juridically determined by a Court of competent jurisdiction, after due process of law, as the plaintiff and her deceased husband were residents of the State of New York and that the State of New York was the legal residence of the parties to said Annulment Proceedings and that due process of law was had and obtained in said Annulment Proceeding and in setting aside said Annulment Decree and failing to give it full force and effect, the defendant, his agents, servants and employees, have acted arbitrarily and without warrant of law, whereas, their sole duty and function in the premises was

ministerial rather than administrative or executive, requiring no discretionary powers in the exercise thereof; the plaintiff says that the defendant, his agents and servants, should be required, as any State would so be required, to give full faith and credit to the regular judicial proceedings of the State of New York, and in so doing, award her death compensation in the sum of, to wit, Forty-two (\$42.00) Dollars per month, effective as of, to wit, October 26, 1948; that the plaintiff has exhausted all of her statutory remedies in appealing to the defendant in an effort to secure the necessary administrative and ministerial action on the part of the defendant for the restoration of the death compensation due her and attaches hereto and makes a part hereof the Decision of the Defendant of July 12, 1950, as Plaintiff's Exhibit A, communication of plaintiff's counsel of September 13, 1950, as Plaintiff's Exhibit B, defendant's Agent's communication of September 22, 1950, as Plaintiff's Exhibit C, the reply of her counsel of September 28, 1950, as Plaintiff's Exhibit D, and the Decree of the Supreme Court of the State of New York of, to wit, October 26, 1948, as Plaintiff's Exhibit E.

WHEREFORE, the premises considered, the plaintiff prays:

1. That an order or orders, decree or decrees, judgment or judgments, be entered herein, requiring and directing the defendant, his agents and employees to pay the plaintiff the sums due her, according to the Statute in such cases made and provided, effective as of the date of the Decree of Annulment herein, namely, to wit, October 26, 1948, and continuing so long as the plaintiff remains the unremarried widow of her deceased husband, the veteran, John Frederick Hahn.

2. And for such other and further relief as the nature

of the case may require and to the Court may seem just and proper.

(s) Ida M. Hahn, Plaintiff, Smallwood, N. Y.

(s) Harlan Wood, Attorney for the Plaintiff, 918 F Street, N.W., Washington 4, D. C.

* * * * *

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PLAINTIFF'S EXHIBIT "A"

VETERANS ADMINISTRATION BOARD OF VETERANS APPEALS

Recorded July 12, 1950

Hahn, John Frederick, XC-997,680—Docket No. 69,251
Public No. 2, 73d Congress, as amended RE DB (Leg.
Rel.) Denied

Appellant represented by: The American Legion

QUESTION AT ISSUE: Entitlement of the appellant, Ida M. Hahn, to restoration of death compensation as claimed unremarried widow of the veteran.

The veteran had honorable active service in the United States Revenue Cutter Service and in the United States Coast Guard between September 1900 and April 1, 1936, date of retirement on account of physical disability. He died on September 9, 1937. Regular Establishment service connection has been granted for the cause of death.

The appellant, who was ceremonially married to the veteran on May 1, 1909, was awarded death compensation as his unremarried widow, commencing September 17, 1937. Death compensation payments were stopped as of May 30, 1947, in view of her remarriage on May 31, 1947, to Harry W. Dreyer in New York. Subsequently, the appellant brought an annulment action in the New York Supreme Court, Sullivan County, and a decree of annulment was

entered on October 26, 1948. There are on file a Clerk's Certificate indicating that the decree became final after the lapse of 90 days, and certified copies of the petition, finding of fact, conclusions of law, and decree, and of the transcript of the testimony at the hearing, at which time the appellant testified. Mr. Dreyer did not file an answer to the complaint nor testify in the action. No evidence was presented, except the testimony of the appellant. The record also contains evidence adduced during a field examination by the Veterans Administration, including depositions by the appellant and Harry W. Dreyer and a report of interview with an attorney who had represented the appellant in the annulment action.

Under existing laws, the appellant is not entitled to continue to receive death compensation by reasons of the veteran's service subsequent to a valid remarriage. Her marriage to Harry W. Dreyer on May 31, 1947, therefore, if valid, is a bar to the restoration of death compensation to her as unremarried widow of the veteran. The burden is upon the appellant to show entitlement to restoration of death compensation by the submission of satisfactory evidence to the Veterans Administration that she was not legally remarried subsequent to the death of the veteran. The submission of a decree of annulment of her marriage to Dreyer does not necessarily establish her entitlement to restoration of death compensation, since the United States Government was not a party to the annulment action and it is not bound by the judgment therein.

6 Evidence on file shows that, at the time of remarriage, the appellant was about 59 years of age and Mr. Dreyer was about 71 years of age and a retired postal employee and that they married largely for mutual companionship. No children were born to them. Each party owned a home at time of marriage. They moved into the appellant's home upon marriage and shortly thereafter Mr. Dreyer sold his home. The appellant and Mr. Dreyer

continued to live in the appellant's home for several months and then moved into an inn where they lived until about April 1948 when they separated. While living together, Mr. Dreyer paid part of the living expenses of his wife. He did not contribute toward her support after the separation. The evidence on file does not show that Mr. Dreyer, prior to the marriage, had planned or had formed an intention to induce the appellant to marry him by false promises to support and maintain her, not warrant a holding that the appellant had been induced to marry him solely by relying upon false and fraudulent promises of that nature by him. The record does not show that the decree of annulment of the marriage of the appellant and Mr. Dreyer was granted upon satisfactory proof of a ground of annulment recognized under the statutory or decisional law of New York, without fraud or collusion. The judgment of annulment, therefore, may not be accepted under the controlling instruction and precedents of the Veterans Administration for the purpose of restoring the appellant to the death compensation rolls as unremarried widow of the veteran. The Board's decision is not intended to be a determination of the marital status of the appellant, except as it may affect her claims for benefits under laws administered by the Veterans Administration, based on the military service of the veteran.

The Board finds that the appellant, Ida M. Hahn, upon the present record, is not entitled to restoration of death compensation as claimed unremarried widow of the veteran. The appeal is accordingly denied.

Mary-Agnes Brown, Associate Member; P. N. Pulman, M.D., Associate Member; Ralph L. Chambers, Associate Member.

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7

PLAINTIFF'S EXHIBIT "B"

September 13, 1950

Mr. R. L. Jarnagin
 Chairman, Board of Veteran Appeals
 Veterans Administration
 Washington 25, D. C.

My dear Mr. Chairman:

I represent Ida Hahn, whose claim for widow's pension in your case Docket No. 69,251 (John Frederick Hahn, XC-997-680) was denied.

I would appreciate it if the Board of Appeals would give me the citation of the authority on which the Ruling was based and any precedents (judicial) with which your office is familiar sustaining such a ruling.

Very truly yours, (s) Harlan Wood.

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8

PLAINTIFF'S EXHIBIT "C"**VETERANS ADMINISTRATION**

Washington 25, D. C.

September 22, 1950

In reply refer to: ICAA
 XC-997 680

HAHN, John Frederick

Mr. Harlan Wood, Attorney at Law
 National Union Building, 918 F Street, N.W.
 Washington 4, D. C.

Dear Mr. Wood:

Reference is made to your letter of September 13, 1950, relative to the decision of the Board of Veterans Appeals

entered on the claim of Mrs. Ida M. Hahn in the above captioned case.

It is noted that the records do not reveal that you have been admitted to practice before the Veterans Administration. While under present regulations there are limitations on the disclosure of factual information to other than the claimant or his authorized representative, it is presumed, however, that you have a copy of the decision in view of the citation furnished and are therefore aware of the facts in this case.

This office is in doubt as to what portion of the decision or "ruling" you desire substantiated. Generally, however, it is to be noted that governing legislation provides that "where compensation or pension is properly discontinued by reason of remarriage it shall not thereafter be recommenced" and in order to establish entitlement to continued benefits, it must be shown that the claimant was not legally remarried. There is no statutory provision authorizing restoration of compensation based on the decree of a court of competent jurisdiction annulling a voidable marriage. The United States Government, not being a party to the annulment action, is not bound by the judgment entered therein. Therefore, the sole jurisdiction and responsibility for determining whether a claim for gratuitous benefits afforded are within the purview of applicable laws inheres in the Veterans Administration and not the courts. While the Government does, as a matter of policy, accept a decree for the purpose of restoring eligibility if it was granted for a cause recognized under the law of the state concerned, this Administration is not bound by such a decree and the burden of proof must be met by the submission of evidence satisfactory to the Administration.

Very truly yours,
R. L. Jarnagin, Chairman, Boards of Veterans
Appeals.

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PLAINTIFF'S EXHIBIT "D"

September 28, 1950

In re—John Frederick Hahn

Docket No. 69-251

JC 997-680

Mr. R. L. Jarnegin
Chairman, Board of Veteran Appeals
Veterans Administration
Washington 25, D. C.

My dear Mr. Chairman:

I thank you for your letter of the 22nd, which I received this morning. I have purposely refrained through the years from becoming admitted to practice before the Veterans Administration for the reason I gave General Himes several years ago. It was then and still is that due to the many honors conferred upon me by the American Legion and the further fact that I had represented so many (over 600) cases without charge, I did not want it said that I was capitalizing upon my Veteran organization service for private gain. I do represent Veterans and their relatives when Court action is contemplated.

Because of the pertinent Constitutional Provisions involved (Art. IV, S. 1) I merely sought an answer to the single question stated in paragraph two of my letter. I want no facts from your Office. I have them all.

I refer you to the word "re-marriage" in the third paragraph of your letter. Your ruling so upset my understanding for so many years that the legal conception of an annulment is that in law there was no marriage. No marriage ever existed. This conception differentiates an annulment from a divorce; hence my limited knowledge of the laws governing the Veterans Administration afforded me no acquaintance with any particular section of the Statutes which conferred upon your Office the extraordinary power assumed by the decision in this case. I could be wrong, as

often I am; therefore my inquiry was for the purpose of ascertaining the source of the power vested in the Veterans Administration and any judicial construction of that power.

Very truly yours, (s) Harlan Wood.

* * * * *

10

PLAINTIFF'S EXHIBIT "E"

At a Term of the Supreme Court of the State of New York held in and for the County of Sullivan at the Court House in the Village of Monticello, New York, on the 21st day of October, 1948.

PRESENT: Hon. Isadore Bookstein, Justice.

Ida Hahn Dreyer, Plaintiff,

against

Harry Dreyer, Defendant.

ACTION FOR ANNULMENT

The above entitled action having been brought by the plaintiff and against the defendant for a judgment annulling the marriage heretofore existing between the parties hereto upon the ground of fraud of the defendant as set forth in the complaint herein; and the defendant having been personally served within the State of New York on the 16th day of September, 1948 with a summons and verified complaint in this action; and 20 days having elapsed since said service and the defendant having filed a notice of appearance through his attorney, Malvin A. Cohen, but not having answered the complaint herein; and the action having been duly brought on for trial before Hon. Isadore Bookstein, one of the Justices of this Court, on the 21st day of October, 1948 for a judgment for the relief demanded in the complaint, and plaintiff having appeared by

Herman A. Machson, Esq., her attorney, and the defendant or his attorney failing to appear, and written proof of the service of the summons and complaint on the defendant, and the affidavit of regularity of this proceeding having been duly presented and testimony having been heard in open court sustaining the allegations set forth in the complaint and the court having been fully advised in the premises and having made a decision in writing, setting forth his findings of fact and conclusions of law, it is

NOW, on application of Herman A. Machson, Esq., attorney for the plaintiff,

Ordered, Adjudged and Decreed that the plaintiff is entitled to a judgment annulling the marriage heretofore existing between the plaintiff and the defendant, and freeing the parties from the obligations thereof, because of the fraud of the defendant, and it is further

Ordered, Adjudged and Decreed that this judgment is interlocutory but shall become the final judgment, as of COURSE, three months after the entering and filing hereof. Unless for sufficient cause the court in the meantime shall otherwise order. Upon this judgment becoming final, the said marriage shall be annulled and the parties shall thereby be freed from the obligations thereof, and it is further

Ordered, Adjudged and Decreed that upon this judgment becoming final, the plaintiff shall be permitted to resume her original name, Ida Hahn.

ENTER, in Sullivan County:

Signed October 26, 1948

Isadore Bookstein, Justice of the Supreme Court.

• • • • •

12 MOTION FOR MANDATORY INJUNCTION

Now comes the plaintiff in the above entitled cause and by her Attorney of Record moves the Court for an Order herein, requiring the defendant, his agents and employees, to pay the plaintiff death compensation in the sum of, to wit, Forty-two (\$42.00) Dollars per month, beginning for the same on, to wit, October 26, 1948.

(s) Harlan Wood, Attorney for Plaintiff, 918 F St., N.W., Washington 4, D. C.

POINTS AND AUTHORITIES

The plaintiff, for points and authorities, states that the United States Statute at large, authorizing the defendant to pay her death compensation, vests no discretion in the defendant to deny her death compensation as the unmarried widow of a veteran of World War I, and that the Statute authorizing the defendant to pay the plaintiff death compensation does not empower the defendant to set aside a lawful annulment of the pretended marriage but states that the defendant's duty and obligation in the premises is ministerial, requiring the exercise of no quasi judicial, or executive function.

(s) Harlan Wood, Attorney for the Plaintiff.

NOTICE TO DEFENDANT

The defendant is required to answer the Complaint and this Motion, in accordance with the limitations prescribed by the Rules of Civil Procedure for the United States District Court for the District of Columbia.

(s) Harlan Wood, Attorney for the Plaintiff.

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16

ANSWER

Comes now the defendant, Carl R. Gray, Jr., Administrator of Veterans Affairs, by his undersigned attorneys, and for answer to the complaint filed herein says:

FIRST DEFENSE

The court is without jurisdiction of the subject of the action and is without jurisdiction to grant the relief prayed for in the complaint.

SECOND DEFENSE

The complaint fails to state a claim against the defendant upon which relief can be granted.

THIRD DEFENSE**I**

Defendant denies the allegations of paragraph designated I of the complaint.

17

II

Defendant denies the allegations of paragraph designated II of the complaint except that defendant admits: that Exhibits A to E, inclusive, attached to the complaint, are, except for several immaterial typographical errors, true and correct copies of the papers and instruments of which they purport to be copies; that pursuant to applicable provisions of law the plaintiff, as the widow of John Frederick Hahn, received a pension in varying amounts under veterans laws from September 17, 1937, to and including May 30, 1947, as of which date the same was discontinued pursuant to lawful proof submitted by the plaintiff to the Veterans Administration that on May 31, 1947, she had married Harry W. Dreyer; that said pension has not since been recommenced.

Defendant denies each and every allegation of the complaint not specifically admitted herein.

Wherefore, defendant prays that this action be dismissed.

George Morris Fay, United States Attorney; Ross O'Donoghue, Assistant United States Attorney; D. Vance Swann, Attorney, Department of Justice, Attorneys for defendant.

Of Counsel: Edward E. Odom, Solicitor, Veterans Administration; David A. Turner, Assistant Associate Solicitor, Veterans Administration.

I, David A. Turner, of counsel for the defendant, hereby certify that on the 9th day of July, 1951, I mailed a copy of the foregoing answer to Harlan Wood, attorney for the plaintiff, to his address, 918 F Street, N.W., Washington, D. C.

David A. Turner, Assistant Associate Solicitor, Veterans Administration, Washington, D. C.

• • • • •

STIPULATION

Reserving their right to adduce further evidence if they so desire, and without prejudice to any contentions, jurisdictional or otherwise, which they have presented or may present herein, the parties, plaintiff and defendant, by their undersigned attorneys of record, hereby stipulate and agree as follows:

John Frederick Hahn had honorable service from September 1, 1900 to September 30, 1905, in the United States Revenue Cutter Service and in the United States Coast Guard, and continuous service therein from February 4, 1907 to April 1, 1936, when he retired on account of physical disability. He died on September 9, 1937, leaving as his widow, Ida M. Hahn, the plaintiff.

Commencing September 17, 1937, Ida M. Hahn as the unremarried widow of John Frederick Hahn, was paid death benefits based on a finding by the Veterans Administration that the cause of the veteran's death was service-connected (peacetime service). Service connection was established pursuant to the provisions of Veterans Administration Regulation No. 1a, Part II (38 USCA, ch. 19 12), and payments of death pension benefits to Ida M. Hahn were commenced, as aforesaid, pursuant to the provisions of Regulation 2a, Part I, Paragraph I(a). Such payments (finally at the rate of \$38.00 per month) were continued until May 30, 1947, when, pursuant to the provisions of Veterans Regulation No. 2a, Part I, Paragraph III(d), they were discontinued by the Veterans Administration on account of Ida M. Hahn's marriage on May 31, 1947 to Harry W. Dreyer in New York, of which the Veterans Administration was advised by plaintiff on June 1, 1947. The said marriage rites were performed in all respects in accordance with the laws of New York.

In September 1948, the plaintiff in this suit brought suit against Harry W. Dreyer in the Supreme Court of Sullivan County, New York, for annulment of her marriage to the said Harry W. Dreyer. The said Harry W. Dreyer, sole defendant in said suit, appeared by attorney, but failed to answer, and on October 26, 1948 an interlocutory decree was entered against him which by its terms became final three months thereafter.

Following entry of the above decree, and on, to-wit, January 27, 1949, the plaintiff applied to the Veterans Administration for restoration of death benefits as the unremarried widow of John Frederick Hahn. Her application was duly considered by the Veterans Administration, which made a final determination prior to the institution of this suit that the said Ida M. Hahn, the plaintiff herein, was not entitled to be restored to the pension rolls, and she has therefore not been restored to the rolls.

Attached hereto and made a part hereof for such weight as the court may properly give the same are true and correct copies of the following documents:

(1) Certificate of Marriage of Harry W. Dreyer and Ida M. Hahn, showing that they were married in Smallwood, New York, on May 31, 1947, by the Rev. George S. MacCallum, Minister, Mongava Valley Methodist Church, in the presence of Edward Dreyer and Annette Dreyer, witnesses;

20 (2) The complaint of Ida Hahn Dreyer against Harry Dreyer, sworn to September 15, 1948 and filed in the Supreme Court of the State of New York for Sullivan County, styled "Action for Annulment";

(3) Transcript of the hearing in the aforesaid annulment action held at Monticello, New York, on October 21, 1948, before the Hon. Isadore Bookstein, including testimony of plaintiff, Ida Hahn Dreyer;

(4) Decree entered by the Hon. Isadore Bookstein on October 26, 1948, in the aforesaid annulment action together with the court's findings of fact and conclusions of law.

(s) Harlan Wood, Attorney for Plaintiff

Charles M. Ireland, United States Attorney; Ross O'Donoghue, Assistant United States Attorney; D. Vance Swann, Department of Justice Attorney, Attorneys for Defendant.

Of Counsel for Defendant: Edward E. Odom, Solicitor, Veterans Administration; David A. Turner, Associate Solicitor, Veterans Administration.

• • • • •

40 FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

The above entitled cause came on regularly for trial on the 11th day of June, 1952, before the Honorable Edward

M. Curran, Judge, presiding, after due and legal notice to the parties. The case having been considered by the court, sitting without a jury, upon the pleadings, the exhibits attached thereto, and the facts stipulated by the parties as reflected by a written stipulation duly filed herein, the court now enters the following Findings of Fact, Conclusions of Law and Judgment:

FINDINGS OF FACT

The facts are found by the court to be as stipulated by the parties, as will be more fully disclosed by the aforesaid stipulation filed herein.

CONCLUSIONS OF LAW

The court concludes as a matter of law that the plaintiff by entering into marriage on May 31, 1947, at Smallwood, New York, with one Harry W. Dreyer lost any right which she might otherwise have had to receive further pension or compensation under veterans' laws as the unremarried widow of John Frederick Hahn, Deceased, and is not entitled to the relief prayed for in the complaint.

JUDGMENT

The court having made its Finding of Facts and Conclusions of Law as hereinabove set forth,

41 It is hereby Ordered, Adjudged and Decreed that plaintiff take nothing, that the action be and it is hereby dismissed on the merits, that defendant have and recover from plaintiff his costs in the action, and that defendant have execution therefor.

Entered this 17th day of June, A.D. 1952, at Washington, D. C.

Edward M. Curran, United States District Judge.

FILED OCT 24 1952

Joseph W. Stewart

CLERK

BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11522

IDA M. HAHN, APPELLANT

v.

CARL R. GRAY, JR., ADMINISTRATOR OF VETERANS' AFFAIRS,
APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

CHARLES M. IRELAN,
United States Attorney.
JOSEPH M. HOWARD,
Assistant United States Attorney.

Of counsel:

HOLMES BALDRIDGE,
Assistant Attorney General.
D. VANCE SWANN,
DAVID ORLIKOFF,
Attorneys, Department of Justice.
DAVID C. BYRD,
Attorney, Veterans' Administration.

STATEMENT OF QUESTIONS PRESENTED

In the opinion of the appellee the questions presented on this appeal are:

1. Whether, in view of the provisions of 38 U. S. C. Sections 11a-2 and 705 (54 Stat. 1197; 48 Stat. 9), the District Court had jurisdiction of this action to compel the Administrator of Veterans' Affairs to restore the appellant to the pension rolls and to pay her such pension as would be payable to the unmarried widow of a veteran whose death was due to peacetime service.

2. Whether, assuming *arguendo* that the District Court had jurisdiction of this action, the Administrator's refusal to restore the appellant to the pension rolls was wholly insupportable and without authority of law.

(1)

INDEX

	Page
Counterstatement of the case.....	1-3
Statutes and regulations.....	3-4
Summary of argument.....	4-5
Argument.....	5
I. The district court properly dismissed the plaintiff's complaint.....	5-9
II. The action of the Administrator of Veterans' Affairs in refusing to restore the appellant to the pension rolls was proper.....	10-11
III. The full faith and credit clause of the Constitution was not applicable to require the appellant's restoration to the pension rolls.....	12-14
Conclusion.....	14-15

TABLE OF CASES CITED

<i>Barnett v. Hines</i> , 70 App. D. C. 217, 105 F. 2d 96, cert. den. 308 U. S. 573, 84 L. Ed. 480.....	9
<i>Calhoun v. Lange</i> , (D. C. Md.) 40 F. Supp. 264.....	13
<i>Corkum v. Clark</i> , 263 Mass. 378, 161 N. E. 912.....	13
<i>Engelhard v. Schroeder</i> , 278 F. 341, Affirmed 258 U. S. 610, 66 L. Ed. 789.....	13
<i>Fennell v. United States</i> , 67 F. 2d 768 (CCA 5).....	14
<i>International Union v. Bradley</i> , 75 F. Supp. 394 (D. C. D. C.).....	9
<i>Lynch v. United States</i> , 292 U. S. 571, 54 S. Ct. 840, 78 L. Ed. 1434..	9
<i>McCullen v. McCullen</i> , 162 App. Div. 599, 147 N. Y. S. 1069.....	12
<i>New York Trust Company v. Riley</i> , 16 A. 2d 772, Affirmed 315 U. S. 343, 86 L. Ed. 885.....	13
<i>Ramsey v. United States</i> , 61 F. 2d 444 (CCA 5).....	13
<i>Slocumb v. Gray</i> , 179 F. 2d 31, 34.....	9
<i>Smith v. United States</i> , 83 F. 2d 631 (CCA 8).....	9
<i>Snauffer et al. v. Stimson et al.</i> , 155 F. 2d 861 (C. A. D. C.), 81 App. D. C. 110.....	9
<i>United States v. Mroch</i> , 88 F. 2d 888 (CCA 6).....	9
<i>Van Horne v. Hines</i> , 122 F. 2d 207, cert. den. 314 U. S. 689, 86 L. Ed. 552.....	6-7-9
Statutes:	
Sec. 5 of Act March 20, 1933 (48 Stat. 9), 38 U. S. C. A. Section 705.....	3-5-6-8-9
Sec. 11 of Act October 17, 1940 (54 Stat. 1197), 38 U. S. C. A. Section 11a-2.....	4-5-6-7-8-9-13
Sec. 7, Domestic Relations Law, State of New York (McKinney's Consolidated Laws of New York Annotated, Book 14).....	11

IV

Statutes—Continued	Page
38 U. S. C. A. 720 (48 Stat. 12)	11
28 U. S. C. A. 1738 (62 Stat. 947)	13
Regulations:	
Veterans Regulation No. 1 (a), Part II, Paragraph III (38 U. S. C. A., Ch. 12, p. 673)	1
Veterans Regulation No. 2 (a), Part I, Paragraph III (d) (38 U. S. C. A., Ch. 12, p. 676)	1-10-11
Veterans Regulation No. 2 (a), Part I, Paragraph IV (a) (38 U. S. C. A., Ch. 12, p. 676)	1-4-10-11
Miscellaneous:	
Constitution, Article 4, Section 1	12

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11522

IDA M. HAHN, APPELLANT

v.

CARL R. GRAY, JR., ADMINISTRATOR OF VETERANS' AFFAIRS,
APPELLEE

*APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA*

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

Pursuant to the provisions of Veterans Regulation No. 1 (a), Part II, Paragraph III (38 U. S. C. A., ch. 12), which relate to pensions for peacetime service, the appellant was on May 30, 1947, receiving a pension as the unremarried widow of John Frederick Hahn, a veteran who died on September 9, 1937 (Jt. App. p. 16). On May 31, 1947, the appellant married Harry W. Dreyer in New York, and the marriage rites were performed in all respects in accordance with the laws of New York. On June 1, 1947, the appellant informed the Veterans Administration of her marriage (Jt. App. pp. 16, 17), and pension payments to her were discontinued pursuant to Veterans Regulation No. 2 (a), Part I, Paragraphs III (d) and IV (a).

Following the marriage ceremony, the appellant and Harry W. Dreyer consummated their marriage by cohabiting as husband and wife until April 1948, when the parties separated (Ex. A. to Complaint, Appellant's Br. p. 7).

In September 1948 the appellant instituted an action for annulment of her marriage to Harry W. Dreyer in the Supreme Court of the State of New York, County of Sullivan, alleging that such marriage was obtained by the fraud of Dreyer in that prior to the marriage he represented to the appellant that if the appellant would marry him he "would provide a home for her," "support and maintain her," and "would assume such obligations as a husband normally would," but that said representations were false and made by Dreyer with the intent that they be believed and acted upon by the appellant, and that as a result thereof the appellant entered into a marriage contract with said Dreyer (Ex. 2 to Stip. of Counsel, Jt. App. p. 17). On October 21, 1948, a hearing was held in the annulment action at which the appellant (plaintiff in said action) testified as the sole witness in her behalf, and Harry W. Dreyer, the defendant therein, did not appear in person or by counsel (Ex. 3 to Stip. of Counsel, Jt. App. p. 17). On October 26, 1948, an interlocutory decree or judgment was entered in said action purporting to annul "the marriage *heretofore existing* between the plaintiff and the defendant, and freeing the parties of the obligations thereof, because of the fraud of the defendant * * *." [Emphasis added.] Said decree further provided: "Upon this judgment becoming final, the said marriage shall be annulled and the parties shall thereby be free from the obligations thereof * * *." Said decree became final pursuant to its terms *three months after entry thereof* (Ex. 4 to Stip. of Counsel, Jt. App., p. 16).

On January 27, 1949, the appellant applied to the Veterans Administration for resumption of payment of pension benefits as the unremarried widow of John Frederick Hahn. After due consideration, it was determined by Veterans Administration adjudicating authorities, and affirmed on appeal by the Board of Veterans' Appeals, that the appellant was not entitled to be restored to the pension rolls, and the appellant has not been restored to such rolls (Jt. App. p. 16).

On November 28, 1950, the appellant brought this action seeking to procure an order "requiring and directing the defendant, his agents and employees to pay the plaintiff the sums due her, according to the Statute in such cases made and provided, effective as of date of the Decree of Annulment herein, namely, to wit, October 26, 1948, and continuing as long as the plaintiff remains the unremarried widow of her deceased husband, the veteran, John Frederick Hahn," and moved for a mandatory injunction *pendente lite*. The appellee filed a motion to dismiss the action upon the ground that the court was without jurisdiction and that the complaint failed to state a claim against the defendant (appellee) upon which relief could be granted. On June 29, 1951, the district court entered an order denying appellant's motion for a mandatory injunction *pendente lite*, and appellee's motion to dismiss the complaint (Rec. Des.). Following a hearing on June 11, 1952, before the Honorable Edward M. Curran, the case was considered by the court, sitting without a jury, upon the pleadings, the exhibits attached thereto and the facts as stipulated by the parties. On June 17, 1952, the court made its findings of fact and conclusions of law, and entered judgment dismissing the plaintiff's complaint on the merits and awarding costs to the defendant (Jt. App. p. 17, 18).

PERTINENT STATUTES AND REGULATIONS

I

Sec. 5 of the Act of March 20, 1933 (48 Stat. 9), 38 U. S. C. A. Section 705* reads:

All decisions rendered by the Administrator of Veterans' Affairs under the provisions of section 701-703, 704, 705, 706, 707-715, 716-721 of this title and sections 30a, 485 of Title 5 or the regulations issued pursuant thereto, shall be final and conclusive on all questions of law and fact, and no other official or court of the United States shall have jurisdiction to review by mandamus or otherwise any such decision. Mar. 20, 1933, c. 3, Title I, Section 5, 48 Stat. 9.

II

Sec. 11 of the Act of October 17, 1940 (54 Stat. 1197) 38 U. S. C. A. Section 11a-2¹ reads:

Notwithstanding any other provisions of law, except as provided in section 445 of this title, as amended, and in section 817 of this title, the decisions of the Administrator of Veterans' Affairs on any question of law or fact concerning a claim for benefits or payments under any Act administered by the Veterans' Administration shall be final and conclusive and no other official or any court of the United States shall have power or jurisdiction to review any such decisions. Oct. 17, 1940, c. 893, section 11, 54 Stat. 1197.

III

Veterans Regulation 2 (a),² Part I, Paragraph IV (a) reads:

Pension payable to a widow shall continue until death or remarriage, provided, however, that where pension is properly discontinued by reason of remarriage, it shall not thereafter be recommenced.

SUMMARY OF ARGUMENT

1. The decision of the Administrator of Veterans' Affairs that the appellant was not entitled to be restored to the pension rolls as the unremarried widow of John Frederick Hahn, deceased, was final and conclusive, and not subject to review by the courts; and the district court was without jurisdiction of this suit, 38 U. S. C. Sections 11a-2 and 705, contain clear and unambiguous language expressly denying jurisdiction of the courts over the Administrator's decisions in pension and compensation matters.

2. The payment of pension benefits to appellant was properly discontinued by the appellee upon appellant's remarriage, and the Administrator's action in refusing to restore her to the pension rolls was lawful and proper.

¹ Sections 11a-2 and 705, 38 U. S. C. A. are set forth *in full* above since only a portion of each is quoted in Appellant's Brief (pp. 1, 2).

² 38 U. S. C. A. Ch. 12, p. 676.

3. The full faith and credit clause of the Constitution is not applicable to require the Administrator of Veterans' Affairs to restore the appellant to the pension rolls because or by virtue of the judgment or decree of the Supreme Court of Sullivan County, New York.

ARGUMENT

I

Sections 11a-2 and 705, 38 U. S. C. A., are applicable to this case, render the Administrator's decision denying benefits to appellant final and conclusive, and preclude judicial review. The District Court was therefore without jurisdiction of this action

The appellant concedes that the Administrator's decisions within the scope of Sections 11a-2 and 705, *supra*, are final and conclusive, and that as to them the courts are without jurisdiction (Appellant's Br. p. 7). However, she contends that such statutory provisions are not applicable to this case for the alleged reason that the appellant's claim "does not relate to benefits or payments" under any statute administered by the Administrator. (Appellant's Br. p. 5.) "The Administrator's decisions on them are admittedly final and conclusive." (Appellant's Br. p. 7.)

Since the appellant's argument centers around the *applicability* of the cited statutes, rather than their legal effect insofar as finality and the jurisdiction of the courts are concerned, perhaps an examination of the statutory language is in order to discern what decisions of the Administrator are encompassed by them. In the first place, it will be noted that one refers to decisions on "any" and the other to decisions on "all" questions of law or fact as being final and conclusive and beyond the jurisdiction of any court. Section 11a-2 further specifies that the question of law or fact be one "concerning a claim for benefits or payments under any act administered by the Veterans Administration" while Section 705 refers to all decisions rendered by the Administrator "under the provisions of this title, or the regulations issued pursuant thereto." Since Section 705 was enacted as section 5 of Title I of Public Law 2, 73rd Con-

gress, which dealt with the payment of both peacetime and wartime pensions and compensations, there is apparently no difference with respect to the scope of the sections under discussion, except that section 11a-2 makes it clear that the decisions of the Administrator "under *any* act administered by the Veterans Administration" shall be final and conclusive, whereas Section 705 referred only to decisions rendered under Title I of Public Law 2, 73rd Congress, and the regulations issued pursuant thereto. This, incidentally, is the precise reason that it was considered necessary when Public Law 866 was before the 76th Congress for consideration, that Section 11a-2 be added by amendment as section 11 thereof.³

The argument is thus narrowed to the question of whether the decision of the Administrator here complained of by appellant involved "a question of law or fact concerning a claim for benefits or payments under (an) act administered by the Veterans' Administration." If it did, the appellant concedes as above stated, that the Administrator's action is final and conclusive and beyond the jurisdiction of the courts. It is elementary, of course, that there are only two basic types of questions which may arise in connection with administrative determination of entitlement to benefits payable under the laws relating to veterans, viz, questions of law and questions of fact. Obviously, then, the Administrator's decision necessarily involved either a question of law or a question of fact, or both. Veterans Regulation No. 2 (a), *supra*, which of course is statutory, provides for continuance of benefit payments "until death or remarriage" of a veteran's widow; therefore, it is apparent that the Administrator's determination that the appellant was not entitled to continuance of benefits was based upon his determination or decision that the appellant had "remarried." This decision necessarily involved questions both of fact and law, and under the cited statutes was final and conclusive upon the appellant because it related to a "claim for benefits or payments." (Appellant's Br. p. 7.) It requires no mental gymnastics to conclude that there is abso-

³ See *Van Horne v. Hines*, 122 F. 2d 207, cert. den. 314 U. S. 689, 86 L. Ed. 552.

lutely no substance to the appellant's contention that the decision complained of did not relate to benefit payments, for it is necessary to look no further than the appellant's statement of the case to see that the appellant on January 27, 1949, applied for (filed claim for) widow's pension and that her claim was denied; also, a reference to the prayer of the plaintiff's complaint (Jt. App. p. 4) will disclose that what the plaintiff sought in the court below was an order "requiring and directing the defendant * * * to pay the plaintiff the sums due her * * * as * * * unremarried widow of * * * John Frederick Hahn." It will be noted further that the plaintiff alleged in her complaint (Jt. App. p. 2) that she had "made application for the restoration of death compensation * * *" but that the Administrator denied her claim. It could hardly be made more obvious that what the appellant sought and still seeks is the payment of benefits under veterans laws.

In discussing further the Congressional intent in the enactment of Section 11, Public Law 866, 76th Congress (Section 11a-2, 38 U. S. C. A.) this court, in *Van Horne v. Hines*, *supra*, stated at page 209:

And this brings us to the single question, whether the act on its face shows that Congress meant to withdraw from the jurisdiction of the courts every final decision of the Administrator in relation to benefit payments in the nature of gratuities provided for under the act. We think this unmistakable intent is shown by the language of the act, and that the plain meaning of the words used brings us necessarily to this result, for the language is that the court shall not consider or review questions of law or fact "concerning a claim for benefits or payments." The words—concerning a claim for payments—can have no other meaning than—having relation to—such payments, and whatever the language of the prayer of the present complaint, the obvious purpose of the suit is to require the Administrator to resume benefit payments to appellant which the Administrator has decided appellant has forfeited all right to. Undoubtedly, if we hold here as ap-

pellant asks, the judgment we should direct would require the Administrator to pay appellant the money benefits accruing since 1937 and those to accrue hereafter—otherwise the action would be bootless—and to do this we would have to review the Administrator's decision "concerning a claim for * * * payments," and this the statute in plain words forbids.

Finally, in an effort to remove this case from the necessary effect of Sections 11a-2 and 705, *supra*, the appellant has argued (Appellant's Br. p. 4, 5, 6, 7) that the Administrator has not by his ruling denied the appellant's claim for benefits, but has denied instead "the very living existence of the claimant." It hardly appears necessary to notice this contention, for the Administrator dealt with the appellant as a living claimant and determined that although she was alive and "existed" as a claimant, such "existence" was not enough to entitle her to further pension benefits as the *unremarried* widow of John Frederick Hahn. The Administrator did not hold that the claimant was not the "widow" of John Frederick Hahn after the annulment; instead, he held merely that even if she was the "widow" of John Frederick Hahn she was nevertheless not entitled to receive further pension from the Government as the "unremarried" widow of such veteran. Without saying that the Administrator's action in this case was arbitrary and capricious or even that the court would have jurisdiction if it were, the appellant contends in her brief that her relationship to the veteran is a matter separate and apart from her pension right, and while the Administrator may properly determine the latter he cannot determine the former. The obvious answer is that determination of the question whether the appellant was or was not the unremarried widow of John Frederick Hahn was vital and essential to her right to receive pension payments, and thus was required to be made by the Administrator in the performance of his duties. In any event, it has now been settled by the repeated decisions of the courts that pension and compensation payments are gratuities as to which the Congress can prescribe any conditions which it chooses, and the United States need not, merely because it

creates a right, also provide a remedy against itself for enforcing such right in the courts. This court, in *Slocumb v. Gray*, 179 F. 2d 31, 34, citing many authorities, stated (referring to Sections 11a-2 and 705):

Under these enactments, the District Court lacked jurisdiction to review the merits of the Administrator's decision on appellant's application, had the administrative proceeding progressed far enough to reach him. Moreover, the authority of Congress to withhold judicial review here is now beyond question. Veterans' benefits are mere gratuities and "the grant of them creates no vested right." "The United States is not, by the creation of claims against itself, bound to provide a remedy in the courts."

This Court's decision in *Van Horne v. Hines*, *supra*, makes it clear that although for a time it may have been considered that the action of the Administrator might possibly be subject to review in cases where it was wholly unsupported by evidence, wholly dependent upon a question of law, or clearly arbitrary and capricious, no such conclusion is now possible since the enactment of Section 705, 38 U. S. C. A., and the construction thereof by the Supreme Court in *Lynch v. United States*, 292 U. S. 571, 54 S. Ct. 840, 78 L. Ed. 1434. Therein Mr. Justice Brandeis, speaking for the Supreme Court, said, at page 1445:

* * * The purpose of the section appears to have been to remove the possibility of judicial relief in that class of cases *even under the special circumstances suggested* in *Crouch v. United States*, 266 U. S. 180, 69 L. ed. 233, 45 S. Ct. 71; *Silberschein v. United States*, 266 U. S. 221, 69 L. ed. 256, 45 S. Ct. 69; *United States v. Williams*, 278 U. S. 255, 73 L. ed. 314, 49 S. Ct. 97; *Smith v. United States* (CCA 4th) 57 F. (2d) 998
* * * [Emphasis added.]

See also, *Barnett v. Hines*, 70 App. D. C. 217, 105 F. 2d 96, cert. den. 308 U. S. 573, 84 L. ed. 480; *Snaruffer et al. v. Stimson et al.*, 155 F. 2d 861 (C. A. D. C.), 81 App. D. C. 110; *United*

States v. Mroch, 88 F. 2d 888 (CCA 6); *Smith v. United States*, 83 F. 2d 631 (CCA 8); and *International Union, etc. v. Bradley*, 75 F. Supp. 394 (D. C. D. C.).

II

The Administrator's action in refusing to restore the appellant to the pension rolls was proper

Veterans Regulations No. 2 (a), Part I, Paragraph IV (a), above quoted in III, provides that pension payments shall be discontinued upon remarriage of a veteran's widow. In this case, the Administrator discontinued pension payments to the appellant upon receipt of her statement, supported by a marriage certificate, that she had married Harry W. Dreyer on May 31, 1947. In such circumstances, her immediate removal from the pension rolls was proper and the appellant does not contend otherwise. In fact, by confining her claim to installments accruing after rendition of the annulment decree the appellant recognizes that, at least during the interval between her marriage to Dreyer and its annulment, she occupied the status of the wife of Dreyer (and thus the remarried widow of the deceased veteran Hahn) rather than as the unremarried widow of Hahn. Moreover, the annulment proceedings provide proof positive, in the form of judicial recognition, of the marital state existing between the appellant and Dreyer prior to January 27, 1949. An examination of the complaint filed by the appellant (plaintiff) in the Supreme Court of Sullivan County, New York, will disclose that in paragraph 2 it is alleged:

That on the 31st day of May, 1947, plaintiff and defendant were married at Smallwood, in the Town of Bethel, Sullivan County, State of New York.

In the findings of fact made by the court on October 26, 1948, it appears also in paragraph 2 thereof:

That plaintiff was married to the defendant in the Hamlet of Smallwood, State of New York, on the 31st day of May, 1947.

Finally, a reference to the decree entered in the annulment action will disclose that the court ordered, adjudged, and decreed that the plaintiff was entitled to a judgment:

* * * annulling the marriage *heretofore existing* between the plaintiff and the defendant, and freeing the parties from the obligation thereof * * *. [Emphasis added.]

The Court further stated in the decree:

Upon this judgment becoming final, the said marriage shall be annulled and the parties shall thereby be freed from the obligations thereof * * *. [Emphasis added.]

The record shows that the annulment decree became final, according to its terms, on January 26, 1949, and hence the marriage *theretofore existing* between appellant and Dreyer was in all respects a subsisting marriage until said date. Section 7 of the Domestic Relations Law of the State of New York (McKinney's Consolidated Laws of New York, Annotated, Book 14), reads in pertinent part as follows:

A marriage is void from the time its nullity is declared by a court of competent jurisdiction if either party thereto: * * *

4. Consents to such marriage by reason of force, duress, or fraud;

Until its nullity is declared, such a marriage is therefore voidable only.

The pension payments to the appellant having been properly discontinued by the Administrator upon the plaintiff's remarriage could not be subsequently resumed, under the express provisions of Veterans Regulation No. 2 (a), Part I, Paragraph IV (a), *supra*. This regulation was a part of Executive Order 6230, promulgated July 28, 1933, was in effect on March 20, 1935 (two years after the passage of Public Law 2, 73rd Congress), and pursuant to Section 19 thereof, was adopted and continued in effect by the Congress. 48 Stat. 12, 38 U. S. C. A. 720.

III

The full faith and credit clause of the Constitution has no applicability in the administrative proceedings in this case, but in any event the Administrator's action in refusing to restore the appellant to the pension rolls is not in conflict therewith

The appellant has charged that the Administrator, by refusing to resume pension payments to the appellant, has denied full faith and credit to the final decree of the New York Court. However, aside from the question whether the full faith and credit clause is for application only by the courts and not by administrative officials, it seems clear that the position assumed by the Administrator in this case is not inconsistent with the annulment decree relied upon by appellant. The New York court did not have before it the question of the appellant's right to a pension under veterans' laws or the effect, if any, which its decree might have on such right. It could not have adjudicated that question because its determination has been committed to the Administrator and the United States has not consented that it be determined in the courts. In this connection, it will be noted that the proceedings of the court have established beyond question that the appellant and Dreyer were married on May 31, 1947, and that such marriage was a valid and subsisting marriage until the effective date of the decree entered by the court, viz, January 26, 1949. It is significant that such decree did not undertake to annul the marriage between the parties, *ab initio*, even if under the New York law above-cited it could properly have done so. Compare *McCullen v. McCullen*, 162 App. Div. 599, 147 N. Y. S. 1069. Had the marriage been wholly void, under New York law, which, of course, it was not, a different question might have been involved, but it is unnecessary to speculate here what action the Administrator might have taken in such case.

A reference to the full faith and credit clause of the Constitution (Article 4, Section 1), the Act of Congress in implementation thereof (28 U. S. C. A. 1738), and the interpretations thereof by the courts leave no doubt that it prescribed a rule

for observance by state and federal courts, and even in them it was never intended that persons who were neither a party to a judgment nor in privity with a party thereto should be bound by the judgment. To this effect, see *New York Trust Company v. Riley*, 16 A. 2d 772, affirmed 315 U. S. 343, 86 L. Ed. 885; *Engelhard v. Schroeder*, 278 F. 341, affirmed 258 U. S. 610, 66 L. Ed. 789. Under the above decisions, since the Administrator was not a party to the annulment action, he is not bound by the judgment entered therein, even if he would otherwise be required to recognize it under the full faith and credit clause, which, of course, he is not.

The courts have recognized that the judgments and decrees of state courts cannot be substituted for determinations of the Administrator of Veterans' Affairs insofar as payments and benefits under veterans' laws are concerned. See *Corkum v. Clark*, 263 Mass. 378, 161 NE 912, where the Supreme Judicial Court of Massachusetts said:

We are of the opinion that these provisions of the acts of Congress, in the light of the grounds of decision in *United States v. Babcock*, 250 U. S. 328, 39 S. Ct. 464, 63 L. Ed. 1011, preclude this court from attempting to impose upon the Pension Department of the Federal government our views as to who is the "widow" of Aubrey D. Corkum under the pension laws of the United States. We cannot do this directly. We think it equally plain that we cannot do it by indirection through enjoining the defendant from making a claim or from accepting the gift. *Foot v. Knowles*, 4 Metc. (Mass.) 386, 390. It will continue to be in the future as it has been in the past for the administrative officers of the United States to determine in the light of all matters presented to them from time to time who is entitled to receive pension payments as the widow of Corkum.

See also *Calhoun v. Lange* (D. C. Md.) 40 F. Supp. 264.

In the case of *Ramsey v. United States*, 61 F. 2d 444 (CCA 5), a case involving war risk insurance, which was expressly ex-

cepted from the operation of section 11a-2, *supra*, the court stated, at page 445:

It is an elementary principle of *res judicata* that, in order to work an estoppel, the judgment relied upon must be rendered in a suit between the same parties or their privies. The United States was not a party to the suit in the state court and not interested in its outcome. The United States has a real and substantial interest, beyond that of a mere stakeholder, to in good faith protect the beneficiary named in a policy of war risk insurance and to make payment according to the contract. The government was not bound by the judgment in the state court. *Privett v. United States*, 256 U. S. 201, 41 S. Ct. 455, 65 L. Ed. 889.

See also *Fennell v. United States*, 67 F. 2d 768 (CCA 5).

In any event, the Administrator has been vested by Congress with absolute and final authority to adjudicate claims for pension and compensation, and to hold that he would be bound to accept the eligibility status of all claimants as determined in judicial proceedings to which he was not a party, would subject the United States to liability without regard to due process of law or congressional purpose and would substitute the decisions of the various courts for the decisions of the Administrator in the administration of veterans law, contrary to the will of Congress. It seems certain that if the Congress had desired to provide that pension payments should be resumed following the annulment of a voidable marriage, or to make the decisions of state and federal courts conclusive as to questions arising in connection with compensation and pension payable under veterans laws it would have done so by appropriate modification of Veterans Regulations.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the court below dismissing the action should be affirmed upon the ground that the court was without jurisdic-

tion or, in the alternative, upon the ground that it was correct on the merits.

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